

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|---------------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Review of Regulatory Requirements for |) | CC Docket No. 01-337 |
| Incumbent LEC Broadband |) | |
| Telecommunications Services |) | |

REPLY COMMENTS OF GVNW CONSULTING, INC.

GVNW Consulting, Inc. respectfully submits these reply comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) in the above-referenced docket. GVNW Consulting is a management-consulting firm that provides a wide variety of consulting services, including regulatory support on issues such as universal service, advanced services, and access charge reform for communications carriers in rural America. We are pleased that the Commission is reexamining these issues.

I. INTRODUCTION

The Commission is wisely refreshing the record on the broadband debate, as there is no current consensus about broadband within the industry. In this proceeding, the Commission is examining the appropriate regulatory requirements for incumbent local exchange carriers' in their provision of domestic broadband telecommunications services. Specifically, the Commission seeks input on what:

“regulatory safeguards and carrier obligations, if any, should apply when a carrier that is dominant in the provision of traditional local exchange and exchange access services provides broadband service.” (NPRM, page 2)

II. BACKGROUND

Grappling with technological changes to regulatory paradigms is nothing new to the Commission. Almost thirty years ago, the Commission began to focus on how to reconcile within a Title II common carrier context the convergence and interdependence of communications and data processing technologies. In this regard, the FCC established separate “basic” and “enhanced” service categories that continue with us today. This proceeding is one of several concurrent proceedings in which the Commission is focusing on the regulatory treatment under Title II of broadband services and the facilities over which such services are provided.

This renewed debate is needed as we continue in the evolution from a one-wire environment to a matrix of delivery options for the end-user customer. We will comport with the directive of footnote 5 in this NPRM and direct our specific comments on cable modem issues to the NPRM released on March 15, 2002. However, we do note at this point that the Commission’s tentative conclusions with respect to cable modem service serve to perpetuate the regulatory inequality that exists today, and raises important national security issues in a time within our nation that national security matters can no longer safely be ignored.

For all Americans, broadband services are starting to become, and will continue to be, increasingly important in both work and home life. On the one hand, some advocates contend that the lack of practical applications is what is driving subscribership. On the other hand, some parties believe that the availability of services will be solved if certain barriers are removed.

Much of the previous debate has focused on issues within the highly populated urban markets, which is understandable. But, we will leave to other parties the portion of the policy debate as to what is prudent and appropriate within the urban markets for urban carriers. We recognize, and encourage the Commission to consider, that some of the policy decisions appropriate in dense urban markets will not translate to rural regions. To this end, we will focus these reply comments on the impact of the regulatory treatment of broadband services for rural carriers in rural markets.

III. IDENTIFICATION OF INCUMBENT LEC-PROVIDED BROADBAND SERVICES MARKETS

In its first step to define relevant markets, the Commission should recognize the unique nature of rural markets

In any market, the provision of broadband services will require enormous investment in order to realize the promise and potential of the technology. In the NPRM, the Commission notes at paragraph 20 that it traditionally has identified two broad categories of markets: the mass market and the larger business market. At paragraph 20, the Commission requests parties to:

“provide any relevant data to demonstrate the existence of a separate mass market”.

We offer the following recommendation in response to this request. The Commission would be well advised to consider an additional subset of the mass market as it develops the policy for these emerging broadband services. **Simply stated, the rural mass market is different.** Small, rural carriers face significant challenge with regard to deploying advanced services to customers. The mitigating factors include, but are not limited to, higher deployment costs, evolving network standards, and continuing

regulatory uncertainty. It may be necessary for the Commission to conduct a separate proceeding on the rural issues related to broadband services.

The nature and scope of these significant differences within the subset of rural carrier markets has been placed in the public record by the Rural Task Force (RTF) via its White Paper 2, entitled The Rural Difference, released in January, 2000. The White Paper offered a very detailed empirical analysis of the major rural carrier differences. In brief, the analysis led the RTF to reach nine conclusions with respect to the rural difference issue:

- 1) Rural carriers serve more sparsely populated areas;
- 2) There is significant variation in study area sizes and customer bases among rural carriers;
- 3) The isolation of areas served by rural carriers results in numerous operational challenges;
- 4) Compared to non-rural carriers, the customer base of rural carriers generally includes fewer high-volume users, depriving rural carriers of economies of scale;
- 5) Compared to customers of non-rural carriers, customers of rural carriers tend to have a relatively small local calling scope and make proportionately more toll calls;
- 6) Rural carriers frequently have substantially fewer lines per switch than do non-rural carriers, providing fewer customers over which to spread high fixed network costs;

- 7) Total investment in plant per loop is substantially higher for rural carriers than for non-rural carriers;
- 8) Plant specific and operations expenses for rural carriers tend to be substantially higher than for non-rural carriers;
- 9) Customers served by rural carriers have different demographic characteristics from customers in areas served by non-rural carriers.

Several of these differences have a direct impact on the deployment of broadband infrastructure. The regulatory requirements to be imposed by the Commission on rural rate-of-return carriers offering broadband service offerings should be structured to reflect these important differences.

IV. APPROPRIATE REGULATORY REQUIREMENTS

The Commission has concerns as to what is the proper level of regulatory oversight

The Commission states its premise for this section of the NPRM and outlined some of its regulatory concerns regarding “problems with ILECs behavior” with the following statement:

*“The basic elements of the current regulatory requirements for the provision of broadband services by incumbent LECs were largely in place well before the development of competition between providers of broadband services. In addition, the requirements were primarily developed to **address problems** created in a one-wire, analog, circuit-switched world.” (emphasis added)*

The Commission has reviewed what it believes to be some of these “problems”, and has identified in this NRRM discussion two discrete methods that carriers use to profitably raise and sustain prices above competitive levels. The first method a carrier

may use to be able to raise prices is by restricting its own output. The Commission refers to this approach in footnote 66 as “Stiglerian” market power. A second method is by increasing its rivals’ costs or by restricting its rivals’ output through the control of an essential input. In footnote 67, this approach is referred to as “Bainian” market power.

To some degree, the same factors are applicable to exercising market power over the provision of broadband services that the Commission has identified for the local exchange and exchange access market. A high initial investment is required in order to offer the service. For many rural carriers, the economies of scale factor are not as relevant. Rural carriers do enjoy direct access to the customer. And, while certainly in a state of transition, some continue to argue that the monopoly legacy of the telecommunications network is present.

In paragraph 29, the Commission states that it has previously found that an incumbent LEC might improperly exercise market power through a variety of methods, the one most applicable to rural carriers being potential cross-subsidization.

For rural non-price cap carriers, the proper level of regulatory oversight is available within the current rules

However, the existing regulatory requirements that are in place for rural carriers serve to limit the market power of rural incumbent LECs. Current Commission rules are more than sufficient to meet the regulatory oversight needs in rural markets. Accounting safeguards embodied in the Commission’s Part 64 rules provide adequate protection against cross-subsidization. Additionally, carriers certify to various third party organizations (e.g., NECA and USAC) that their annual interstate cost studies and

various federal universal service support mechanism calculations comply with all applicable Federal Communications Commission rules and regulations.

What is the impact of these existing rules on broadband deployment?

Why have competitors focused to this point on urban markets and what has been the experience to date in the very rural markets? In some cases, deployment of advanced service capability is not, at present, economically feasible without some source of support mechanism. If the Commission is committed to seeing that advanced services are offered throughout all regions of the country, then some sort of universal service type funding will need to be available for the high-cost areas. As we stated in our September 14, 1998 comments in the NOI in CC Docket No. 98-146:

“We should not assume that there will be someone available to serve the advanced telecommunications needs of all citizens, especially those who live a great distance from the serving wire center. This assumption may not be valid without adequate universal service mechanisms.”

What else does the Commission need to do to promote advanced services for rural America?

We are pleased that the Commission is addressing the challenges we face with respect to widespread deployment of advanced telecommunications capability for all Americans. We believe that the deployment of advanced telecommunications capability to rural Americans will require a different set of regulatory parameters. The technological pace of change has increased by several orders of magnitude. Our review of the current state of affairs indicates that convergence and new technology allows voice, channelized video programming, video on demand, two way video, and information services to be offered over the same ATS platform.

A whole host of actions may be contemplated by the Commission to assist in the acceleration of the deployment of these desired advanced service offerings. The following suggestions are made with the small, rural markets in mind.

The current regulatory scheme of requiring unbundled resale in some cases creates a strong disincentive, if not deterrent, to any investment in advanced telecommunications capability, at least in the rural markets. Was the intent of Congress to place the entire burden and risk on rural incumbent local exchange carriers? We believe that is not the case. We believe that an approach similar to the Commission's course of action in the *Computer III* proceeding is applicable to assist the deployment of advanced telecommunications capability in rural America. With *Computer III*, the FCC permitted select carriers to provide enhanced services on an integrated basis, subject to non-structural accounting and interconnection safeguards.

We recommend that companies eligible under Section 251 (f) be exempt from resale and interconnection requirements for advanced telecommunications capability and services for a period of at least 5 years.

Any rules promulgated should be technologically neutral. Any rules should be as general as possible, in order to permit for maximum innovation and deployment with minimal change to the rules. Rules for advanced service deployment should address frameworks, not detailed specifications. The framework of the regulation should permit change over time to account for the evolution in markets, services, and technologies. However, regardless of the advancement in the technology, there will always be the need for the commitment of capital to deploy the necessary infrastructure. In some rural areas, this is not a small investment.

Any support to be provided for advanced services should require universal coverage under a set time frame, to assure that “cream skimming” does not take place by a competitor focused to only a segment of customers. In addition, any receipt of support should require that minimum service standards be achieved for outages, repair response, customer interface, and billing accuracy and correction. This will ameliorate any incentive to deploy sub-standard systems that are deployed only to be eligible to receive a portion of this new support.

CONCLUSION

We applaud the Commission’s continuing focus on bringing the benefits of advanced services to all Americans. We encourage the policy maker to keep in mind that competition, especially in the area of advanced services, will emerge unevenly among geography, services, and customer classes. We continue to believe that the most likely source of access to advanced services for the majority of rural customers will be the incumbent local exchange carrier. In this regard, we recommend that the Commission be mindful of the very real differences between urban and rural markets. The Commission’s recent RTF and MAG orders recognized these important rural differences. In order to best promote affordable advanced telecommunications services to rural Americans, it will be important to recognize these rural differences in the policy development phase for broadband technologies.

GVNW Consulting, Inc.
Reply comments in CC Docket No. 01-337
April 22, 2002

Respectfully submitted,

Electronically filed – paper copies not used

Jeffrey H. Smith
Consulting Manager
GVNW Consulting, Inc.
8050 SW Warm Springs Street, Suite 200
Tualatin, Oregon 97062
Jsmith@gvnw.com